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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/737,457	03/12/1997	DONALD LEONARD NICHOLAS CARDY	960670.ORI	5220

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[REDACTED] EXAMINER

EWOLDT, GERALD R

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

1644

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35

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. <b>08/737,457</b>	Applicant(s) <b>Cardy et al.</b>
	Examiner <b>G.R. Ewoldt</b>	Art Unit <b>1644</b>
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>		
<b>Period for Reply</b>		
<p>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>1</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.</p> <ul style="list-style-type: none"> <li>- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</li> <li>- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.</li> <li>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</li> <li>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).</li> <li>- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</li> </ul>		
<b>Status</b>		
1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>Aug 5, 2002</u>		
2a) <input type="checkbox"/> This action is <b>FINAL</b> .      2b) <input checked="" type="checkbox"/> This action is non-final.		
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11; 453 O.G. 213.		
<b>Disposition of Claims</b>		
4) <input checked="" type="checkbox"/> Claim(s) <u>1, 2, 5-7, 9, 11, 16-19, and 21-24</u> is/are pending in the application.		
4a) Of the above, claim(s) _____ is/are withdrawn from consideration.		
5) <input type="checkbox"/> Claim(s) _____ is/are allowed.		
6) <input type="checkbox"/> Claim(s) _____ is/are rejected.		
7) <input type="checkbox"/> Claim(s) _____ is/are objected to.		
8) <input checked="" type="checkbox"/> Claims <u>1, 2, 5-7, 9, 11, 16-19, and 21-24</u> are subject to restriction and/or election requirement.		
<b>Application Papers</b>		
9) <input type="checkbox"/> The specification is objected to by the Examiner.		
10) <input type="checkbox"/> The drawing(s) filed on _____ is/are a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).		
11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.		
12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.		
<b>Priority under 35 U.S.C. §§ 119 and 120</b>		
13) <input type="checkbox"/> Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).		
a) <input type="checkbox"/> All b) <input type="checkbox"/> Some* c) <input type="checkbox"/> None of: 1. <input type="checkbox"/> Certified copies of the priority documents have been received. 2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____. 3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). *See the attached detailed Office action for a list of the certified copies not received.		
14) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e). a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.		
15) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.		
<b>Attachment(s)</b>		
1) <input type="checkbox"/> Notice of References Cited (PTO-892)		
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)		
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____		
4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____		
5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)		
6) <input type="checkbox"/> Other: _____		

**DETAILED ACTION**

1. In view of Applicant's amendment, filed 8/05/02, an additional restriction is required. Note that Claim 24 comprised a previously non-elected invention and is therefore not now subject to election.

2. Restriction to one of the following inventions is required under 35 U.S.C. § 121:

I. Claims 1, 2, 5-7, 9, 11, and 16-19, drawn to polypeptide comprising a ScFv, a p53 fragment (KYICNSSCM SEQ ID NO:7), and optionally, an HIV tat protein translocation domain, classified in Class 530, subclass 387.3 and 388.8.

II. Claims 1, 2, 5-7, 9, 11, and 16-19, drawn to polypeptide comprising a ScFv, an influenza A protein fragment (GILGFVFTL SEQ ID NO:8), and optionally, an HIV tat protein translocation domain, classified in Class 530, subclass 387.3 and 389.4.

III. Claims 21-23, drawn to a method of stimulating cell lysis with a polypeptide comprising a ScFv, a p53 fragment (KYICNSSCM SEQ ID NO:7), and optionally, an HIV tat protein translocation domain, classified in Class 424, subclass 195.11.

IV. Claims 21-23, drawn to a method of stimulating cell lysis with a polypeptide comprising a ScFv, an influenza A protein fragment (GILGFVFTL SEQ ID NO:8), and optionally, an HIV tat protein translocation domain, classified in Class 424, subclass 196.11.

3. Inventions I and II are different products. The products comprise different components with different immunological properties, i.e., a p53 fragment comprises significantly different properties than does an influenza virus fragment. Therefore the products are patentably distinct.

4. Inventions I/III and II/IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (M.P.E.P. § 806.05(h)).

In the instant case, the products as claimed can be used in materially different processes, such as for *in vitro* assays.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

6. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.

7. Any inquiry concerning this communication from the examiner should be directed to Dr. Gerald Ewoldt whose telephone number is (703) 308-9805. The examiner can normally be reached Monday through Thursday from 7:30 am to 5:30 pm. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on (703) 308-3973.

Papers related to this application may be submitted to Technology Center 1600 by facsimile transmission. Papers should be faxed to Technology Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM1 Fax Center telephone number is (703) 305-3014.



G.R. Ewoldt, Ph.D.  
Patent Examiner  
Technology Center 1600  
October 7, 2002